

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
AT SPOKANE

HELL YEAH CYCLES, a Washington
Limited Liability Company,

Plaintiff,

vs.

OHIO SECURITY INSURANCE
COMPANY, a foreign insurer,
Defendant.

No. CV-13-184-TOR

NOTICE OF REMOVAL TO
FEDERAL COURT PURSUANT TO
28 USC §1441 & §1446

TO: Judges of the United States
District Court for the Eastern District of Washington at Spokane

AND TO: The Attorney for Plaintiff

Defendant Ohio Security Insurance Company, ("Ohio Security"), hereby
provides notice of removal pursuant to 28 U.S.C § 1332(a) and (c), § 1441(a), §
1446(a), (b) and (d), and Western District CR 101(a) and (b). The grounds for
removal are as follows:

NOTICE OF REMOVAL TO FEDERAL
COURT – I
ljj/JBL1379.274/1198411

WILSON SMITH COCHRAN DICKERSON
A PROFESSIONAL SERVICE CORPORATION
901 FIFTH AVENUE, SUITE 1700
SEATTLE, WASHINGTON 98164-2050
TELEPHONE: (206) 623-4100 FAX: (206) 623-9273

1 1. On April 15, 2013, Plaintiff filed a Summons and Complaint in the
2 Superior Court of Spokane County. The complaint was served on Ohio Security
3 on April 19, 2013. The case is entitled, *Hell Yeah Cycles v. Ohio Security*
4 *Insurance Company*, Cause No. 13-2-01393-7. See Declaration of Joshua B.
5 Lane In Support Of Removal To Federal Court Pursuant To 28 USC §1441 &
6 §1446 ("Lane Declaration"), ¶ 3. A true and correct copy of the Complaint is
7 attached as **Exhibit A** to the Lane Declaration. This Notice of Removal is
8 therefore timely because it has been filed within thirty (30) days after the case
9 first became removable. 28 U.S.C. § 1446(b).

10
11 2. This notice of removal is brought pursuant to 28 U.S.C. §§1441(a),
12 1446 and Eastern District CR 101(a) and (b). This Court has original
13 jurisdiction pursuant to 28 U.S.C. §1332(a) and (c) on the basis that there is
14 complete diversity of citizenship between the parties and the amount in
15 controversy is in excess of \$75,000, exclusive of interest and costs. Venue is
16 proper in the U.S. District Court for the Eastern District of Washington because
17 the action was filed in Spokane County, Washington. See 28 USC §1441(a). *Id.*
18 at ¶ 4.

19
20
21 3. Defendant Ohio Security is a foreign corporation. *Id.* at ¶ 5. Ohio
22 Security currently is incorporated under the laws of the State of Ohio with its
23

1 principal place of business in Boston, Massachusetts and therefore is a citizen of
2 a state other than Washington. *Id.*

3 4. Upon information and belief, Plaintiff was at the time the complaint
4 was filed, and currently is a Washington limited liability corporation, and
5 therefore a resident of Washington. Lane Decl. ¶ 6. There is complete diversity
6 of citizenship between the parties pursuant to 28 U.S.C. §1332 (a) and (c).
7

8 5. Plaintiff asserts claims for property damage claimed under the
9 insurance contract, breach of contract, alleged bad faith and for violations of the
10 Washington Administrative Code Regulations, the Insurance Fair Conduct Act
11 and Consumer Protection Act. Lane Decl. ¶ 7; *see also* Ex. A to the Lane Decl.
12 at ¶¶ 3.1 – 7.1. These claims relate to November 28, 2012 fire which allegedly
13 destroyed both the building and contents owned by Plaintiff. *Id.* Upon
14 information and belief, the amount of actual damages in controversy in this
15 matter is in excess of \$75,000. *Id.*
16

17 6. In addition to contractual damages and general damages in this
18 matter, Plaintiff also seeks treble damages and attorney fees under the Insurance
19 Fair Conduct Act and Consumer Protection Act, which are included for
20 calculating whether a plaintiff's claim meets the amount in controversy
21 requirement. *See e.g., Guglielmino v. McKee Foods Corp.*, 506 F.3d 696,
22
23

1 700 (9th Cir. 2007); Lane Decl. ¶ 8.

2 7. The underlying state court action is one for which this Court has
3 original jurisdiction under the provisions of 28 U.S.C. § 1332, and is one that
4 may be removed to this Court by the defendant pursuant to the provisions of 28
5 U.S.C. § 1441 because the matter in controversy exceeds the sum or value of
6 \$75,000 and is between citizens of different states.
7

8 8. Pursuant to 28 U.S.C. § 1332(a) and (c), § 1441(a), § 1446(a), (b)
9 and (d), and Eastern District CR 101(a) and (b) of the Local Rules for the
10 Eastern District of Washington, this case is properly removable.
11

12 9. Defendant Ohio Security has given written notice of the filing of
13 this Notice of Removal to all attorneys of record and to the Clerk of the Superior
14 Court of Spokane County, Washington. 28 U.S.C. § 1446(d). In accordance
15 with Eastern District Civil Rule 101(b), a true and correct copy of the docket,
16 which includes the Complaint and all other pleadings filed in the state court, is
17 attached to the Lane Dec. at **Exhibit B**.
18

19 WHEREFORE, Defendant Ohio Security requests that this action be
20 removed to the United States District Court for the Eastern District of
21 Washington at Spokane.
22

23 ///

1 DATED this 15th day of May, 2013.

2 s/John M. Silk

3 John M. Silk, WSBA No. 15035

4 WILSON SMITH COCHRAN DICKERSON

5 Of Attorneys for Ohio Security Insurance Company

6 901 Fifth Avenue, Suite 1700

7 Seattle, WA 98164

8 Ph: (206) 623-4100 / Fax: (206) 623-9273

9 silk@wscd.com

10
11
12
13
14
15
16
17
18
19
20
21
22
23
NOTICE OF REMOVAL TO FEDERAL

COURT – 5

ljj/JBL1379.274/1198411

WILSON SMITH COCHRAN DICKERSON

A PROFESSIONAL SERVICE CORPORATION

901 FIFTH AVENUE, SUITE 1700

SEATTLE, WASHINGTON 98164-2050

TELEPHONE: (206) 623-4100 FAX: (206) 623-9273

CERTIFICATE OF SERVICE

I am employed by the law firm of Wilson Smith Cochran Dickerson, 901 Fifth Avenue, Suite 1700, Seattle, WA 98164. On the date below I caused to be served the foregoing document on:

Attorney for Plaintiffs

Brian S. Sheldon
Phillabaum, Ledlin, Matthews & Sheldon, PLLC
1235 North Post Street, Suite 201
Spokane, WA 99201

() Via U.S. Mail

() Via Facsimile: 509-625-1909

(X) Via Hand Delivery

(X) Via Email: bsheldon@spokelaw.com (ECF Notification)

I declare under penalty of perjury and under the laws of the State of Washington that the forgoing is true and correct.

SIGNED this 15th day of May, 2013 at Seattle, Washington.

s/Aimee Muul

Aimee Muul